No. 80-1783

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

THE STATE OF CALIFORNIA,

Petitioner,

v.

BILLY LEE CHADD,

Respondent.

PETITIONER'S RESPONSE TO BRIEF IN OPPOSITION

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I

PETITIONER HAS STANDING TO RAISE THE QUESTIONS PRESENTED TO THIS COURT

At the time of trial, respondent demanded his constitutional right to enter the plea of his choice even over his counsel's objection. He demanded the court prohibit application

of Penal Code section 1018 which requires counsel's consent. The trial court found respondent had such a right.

On his automatic appeal to the California Supreme Court, respondent urged the trial court erred and should not have allowed the plea because his attorney did not consent as required under section 1018. The California Supreme Court agreed.

Respondent now contends that since he is not asserting his Sixth Amendment rights before the court, petitioner may not raise the issue of whether he could plead guilty without his counsel's consent. (Brief In Opposition, pp. 1-3.)

Preliminary, it may be noted respondent has neglected to inform this Court that this same argument was presented to the California Supreme

in respondent's reply brief. (Reply brief, pp. 5-8.) That court obviously rejected the contention. The State of California fully briefed and argued its opposition before the California Supreme Court, and the court issued an opinion on the merits of the issue. By its actions and opinion in this case, the California Supreme Court has eliminated all doubt that petitioner, the State of California, does have standing to raise the issues presented here. This is grounded in very sound logic.

Contrary to his assertions, respondent has placed his Sixth Amendment rights, and the constitutionality of Penal Code section 1018, in issue. The constitutionality of Penal Code section 1018 (which requires counsel's consent to a guilty plea) was raised by respondent himself when, at trial, he demanded the

trial court disregard that statute and allow him to plead guilty over the consent of this trial counsel.

In seeking to uphold the judgment of the trial court, the State of California is unavoidably placed in the position of defending the trial court's and respondent's position at trial. The mere fact respondent changed his position on appeal does not preclude the state from seeking to uphold the judgment of the trial court. Were this to occur, respondent would have become not only the respresentative of his current position, but dictator of California's legal position as well.

Respondent will have succeeded not only in forcing the trial court into the unconscionable constitutional dilemma present in this case, but in precluding the state from even arguing the trial

court acted properly. The result would be unfair and nonsensical. No one but respondent would be allowed to defend the judgment below, and if he chose not to do so, it could not be defended at all.

In this case, the State of California can defend the judgment below only by advancing the very rights respondent asserted below. As such, the state does have standing. (See Illinois v. Somerville (1973) 410 U.S. 458.)

Respondent's standing argument is utterly without merit. It has been rejected by the California Supreme Court, and should likewise be rejected by this Court.

II

THERE IS CLEARLY A JUSTICIABLE CASE AND CONTROVERSY

Respondent alleges petitioner has raised a hypothetical question

because "the record does not raise the issue framed by petitioner." (Brief in Opposition, p. 3.) Respondent has not articulated the issue in this case. Indeed, with all due respect, he has ignored the issue presented.

The very significant question posed in this case is whether a state may condition a plea of guilty in a capital case on the consent of defense counsel. This is not a "hypothetical" issue.

California Penal Code section 1018 requires such pleas of guilty be conditioned on the consent of counsel. Respondent demanded his right to plead guilty without his counsel's consent. The problems posed by this confrontation were the source of considerable controversy and argument at the time of trial.

On the automatic appeal to the

California Supreme Court, respondent did an "about face." He urged Penal Code section 1018 was constitutional and the plea should not have been entered without his counsel's consent. The state argued the statute was not constitutional. The constitutionality of the plea requirements contained in section 1018 was then decided by the California Supreme Court, and the issue of whether a plea could be entered without defense counsel's consent was the very issue upon which respondent's plea of guilty was voided by that court.

It is inconceivable that there could be another case or record which more clearly raises the constitutional issue presented to this Court.

III

THE CALIFORNIA LAW EMASCULATES FARETTA

Respondent's final assertion is

that Penal Code section 1018, as interpreted in this case by the California Supreme Court, does not impinge upon this Court's opinion in Faretta v. California (1975) 422 U.S. 806. (Brief in Opposition, pp. 3-6.) It does not "impinge" upon Faretta. It emasculates Faretta. (See Petn. for Writ of Cert., pp. 30-42.)

Respondent also asserts the requirement of counsel's consent to a guilty plea contained in section 1018 protects the integrity of death penalty proceedings. (Brief in Opposition, p. 4.) Petitioner disagrees. Petitioner has strongly urged that it succeeds only in subverting the interests of justice in capital cases. (Petn. for Writ of Cert., pp. 43-63.) The Brief in Opposition has

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not lessened petitioner's belief that this is the case.

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CONCLUSION

The issue presented in this case is significant and it is respectfully urged, that it is one which should be considered by this Court.

Moreover, the issue is squarely presented upon a very clear and concise record, by the parties who have the direct interest in its outcome.

Respectfully submitted,

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

AFFIDAVIT OF SERVICE BY MAIL

Clifford E. Reed, Jr., being duly sworn, deposes and says: That affiant is over the age of 18 years, and not a party to the within action; that affiant's place of employment and business address is 110 West "A" Street, Suite 600, San Diego, California 92101; that on the 28 day of May, 19 81, affiant enclosed one true copy of the within

PETITIONER'S RESPONSE TO BRIEF IN OPPOSITION
(People v. Chadd, No. 80-1783)

in an envelope for each of the persons named below, addressed to each of them at the address set out immediately below each respective name, sealed said envelope, and deposited the same in the United States Mail at the City of San Diego, County of San Diego, State of California, with postage thereon fully prepaid; that there is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the said place of mailing and each of the places so addressed.

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FOR DELIVERY TO HON.
EARL H. MAAS, JR., JUDGE

Clifford E. Reed

CLIFFORD E. REED, JR.

Subscribed and sworn to before me this 28th day of MAY, 19 81.

Karen K. Lum

NOTARY PUBLIC in and for the County of San Diego, State of California.

KAREN K. LUM
NOTARY PUBLIC — CALIFORNIA
COUNTY OF SAN DIEGO
My Commission expires Feb. 03, 1984

SD CL-3 (11/78)